

AMENDED IN SENATE JUNE 10, 2008

AMENDED IN ASSEMBLY APRIL 9, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2874**

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**Introduced by Assembly Member Lieber**

February 22, 2008

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An act to amend ~~Section 12970~~ *Sections 12903 and 12970* of the Government Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2874, as amended, Lieber. Civil Rights: damages.

Under the California Civil Rights Act of 2005, all persons within the jurisdiction of this state have the right to be free from violence, or intimidation by threat of violence, committed against their persons or property because of any specified characteristic or affiliation, including political affiliation, position in a labor dispute, disability, medical condition, sex, race, color, religion, marital status, ancestry, or national origin. The California Fair Employment and Housing Act limits the total amount of actual damages that the California Fair Employment and Housing Commission may assess against a respondent for a violation of the California Civil Rights Act of 2005, per aggrieved person, to \$150,000.

This bill would delete the \$150,000 limitation on actual damages that may be assessed by the California Fair Employment and Housing Commission against a respondent who violates the California Civil Rights Act of 2005, as an unlawful practice.

*Under existing law, the Fair Employment Housing Commission exists within the State and Consumer Services Agency.*

*This bill would rename the Fair Employment and Housing Commission the California Civil Rights Commission.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 12903 of the Government Code is*  
2     *amended to read:*

3     12903. (a) There is in the State and Consumer Services Agency  
4     ~~the Fair Employment and Housing Commission~~ *California Civil*  
5     *Rights Commission.* The commission shall consist of seven  
6     members, to be known as commissioners, who shall be appointed  
7     by the Governor, by and with the advice and consent of the Senate,  
8     and one of whom shall be designated as chairperson by the  
9     Governor. The term of office of each member of the commission  
10    shall be for four years.

11    (b) *Any reference in statute or regulation to the Fair*  
12    *Employment and Housing Commission shall be construed to refer*  
13    *to the California Civil Rights Commission.*

14    (c) *Nothing in this section requires a state or local agency to*  
15    *revise any regulation, form, or document.*

16    ~~SECTION 1.~~

17    *SEC. 2. Section 12970 of the Government Code is amended*  
18    *to read:*

19    12970. (a) If the commission finds that a respondent has  
20    engaged in any unlawful practice under this part, it shall state its  
21    findings of fact and determination and shall issue and cause to be  
22    served on the parties an order requiring the respondent to cease  
23    and desist from the unlawful practice and to take action including  
24    any of the following:

25    (1) The hiring, reinstatement, or upgrading of employees, with  
26    or without backpay.

27    (2) The admission or restoration to membership in any  
28    respondent labor organization.

29    (3) The payment of actual damages as may be available in civil  
30    actions under this part, except as otherwise provided in this section.

31    Actual damages include damages for emotional injuries if the

1 accusation or amended accusation prays for those damages. Actual  
2 damages awarded under this section for emotional pain, suffering,  
3 inconvenience, mental anguish, loss of enjoyment of life, and other  
4 nonpecuniary losses shall not exceed, in combination with the  
5 amounts of any administrative fines imposed pursuant to  
6 subdivision (c), one hundred fifty thousand dollars (\$150,000) per  
7 aggrieved person per respondent.

8 (4) Notwithstanding paragraph (3), the payment of actual  
9 damages assessed against a respondent for a violation of Section  
10 51.7 of the Civil Code, as an unlawful practice under this part.

11 (5) Affirmative or prospective relief to prevent the recurrence  
12 of the unlawful practice.

13 (6) A report to the commission as to the manner of compliance  
14 with the commission's order.

15 (b) (1) An unlawful practice under this part alone is not  
16 sufficient to sustain an award of actual damages pursuant to this  
17 section. The department is required to prove, by a preponderance  
18 of the evidence, that an aggrieved person has sustained actual  
19 injury. In determining whether to award damages for emotional  
20 injuries, and the amount of any award for these damages, the  
21 commission shall consider relevant evidence of the effects of  
22 discrimination on the aggrieved person with respect to any or all  
23 of the following:

24 (A) Physical and mental well-being.

25 (B) Personal integrity, dignity, and privacy.

26 (C) Ability to work, earn a living, and advance in his or her  
27 career.

28 (D) Personal and professional reputation.

29 (E) Family relationships.

30 (F) Access to the job and ability to associate with peers and  
31 coworkers.

32 (2) The shall also consider the duration of the emotional injury,  
33 and whether that injury was caused or exacerbated by an aggrieved  
34 person's knowledge of a respondent's failure to respond adequately  
35 to, or to correct, the discriminatory practice, or by the  
36 egregiousness of the discriminatory practice.

37 (c) In addition to the foregoing, in order to vindicate the  
38 purposes and policies of this part, the commission may assess  
39 against the respondent, if the accusation or amended accusation  
40 so prays, an administrative fine per aggrieved person per

1 respondent, the amount of which shall be determined in accordance  
2 with the combined amount limitation of paragraph (3) of  
3 subdivision (a).

4 (d) (1) In determining whether to assess an administrative fine  
5 pursuant to this section, the commission shall find that the  
6 respondent has been guilty of oppression, fraud, or malice,  
7 expressed or implied, as required by Section 3294 of the Civil  
8 Code. In determining the amount of fines, the commission shall  
9 consider relevant evidence, including evidence of the following:

- 10 (A) Willful, intentional, or purposeful conduct.
- 11 (B) Refusal to prevent or eliminate discrimination.
- 12 (C) Conscious disregard for the rights of employees.
- 13 (D) Commission of unlawful conduct.
- 14 (E) Intimidation or harassment.
- 15 (F) Conduct without just cause or excuse.
- 16 (G) Multiple violations of the Fair Employment and Housing  
17 Act.

18 (2) The moneys derived from an administrative fine assessed  
19 pursuant to this subdivision shall be deposited in the General Fund.  
20 No administrative fine shall be assessed against a public entity.  
21 The commission shall have no authority to award punitive damages  
22 as a remedy for a finding of employment discrimination.

23 (e) In addition to the foregoing, in order to vindicate the  
24 purposes and policies of this part, the commission may assess  
25 against the respondent if the accusation or amended accusation so  
26 prays, a civil penalty of up to twenty-five thousand dollars  
27 (\$25,000) to be awarded to a person denied any right provided for  
28 by Section 51.7 of the Civil Code, as an unlawful practice  
29 prohibited under this part.

30 (f) If the commission finds the respondent has engaged in an  
31 unlawful practice under this part, and the respondent is licensed  
32 or granted a privilege by an agency of the state to do business,  
33 provide a service, or conduct activities, and the unlawful practice  
34 is determined to have occurred in connection with the exercise of  
35 that license or privilege, the commission shall provide the licensing  
36 or privilege granting agency with a copy of its decision or order.

37 (g) If the commission finds that a respondent has not engaged  
38 in an unlawful practice under this part, the commission shall state  
39 its findings of fact and determination and issue and cause to be

1 served on the parties an order dismissing the accusation as to that  
2 respondent.

3 (h) Any findings of fact and determination made or any order  
4 issued pursuant to this section shall be written and shall indicate  
5 the identity of the members of the commission who participated  
6 therein.

7 (i) Any order issued by the commission shall have printed on  
8 its face references to the rights of appeal of any party to the  
9 proceeding to whose position the order is adverse.

10 (j) If the commission finds that a respondent has engaged in an  
11 unlawful practice under this part, and it appears that this practice  
12 consisted of acts described in Section 243.4, 261, 262, 286, 288,  
13 288a, or 289 of the Penal Code, the commission, with the consent  
14 of the complainant, shall provide the local district attorney's office  
15 with a copy of its decision and order.

16 (k) Notwithstanding Section 12960, if the commission finds  
17 that a respondent has engaged in unlawful discrimination in  
18 housing under Section 12948, the remedies afforded in Section  
19 12987 or any other provision in this part pertaining to housing  
20 discrimination, shall apply.